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Attorneys for Sam Leslie,
Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re
COLDWATER DEVELOPMENT, LLC,
A California limited liability company,

Debtor.

In re
LYDDA LUD, LLC, a California limited liability
company,

Debtor.

- ☒ Affects both Debtors.
☐ Affects Coldwater Development LLC only.
☐ Affects Lydda Lud, LLC only.

Debtors.

Case No. 2:21-bk-10335-BB

Chapter 11

Jointly Administered with
Case No. 2:21-bk-10336-BB

**CHAPTER 11 TRUSTEE'S MOTION TO
CLARIFY ORDER GRANTING CHAPTER
11 TRUSTEE'S MOTION FOR ORDER:
APPROVING RETENTION OF
THREESIXTY ASSET ADVISORS, LLC
AND WFS INC. DBA TRANZON ASSET
STRATEGIES AS AUCTIONEERS
PURSUANT TO 11 U.S.C. § 327 AND
APPROVING AUCTIONEER'S PROPOSED
COSTS; DECLARATIONS OF DAVID
SEROR AND SAM LESLIE**

Application for Order Shortening Time Filed
Concurrently Herewith

Hearing on Shortened Notice:

Date: To be set
Time: To be set
Place: Courtroom 1539
Edward R. Roybal Federal Building
255 E. Temple Street
Los Angeles, CA 90012

1 **TO THE HONORABLE SHERI BLUEBOND, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE DEBTORS AND THEIR COUNSEL, CREDITORS, THE OFFICE OF THE UNITED**
3 **STATES TRUSTEE, AND ALL OTHER INTERESTED PARTIES:**

4 Sam S. Leslie, the duly appointed and acting Chapter 11 Trustee (the “Trustee”) of the
5 bankruptcy estates (“Estates”) of Coldwater Development, LLC (“Coldwater Debtor”) and Lydda
6 Lud, LLC (“Lydda Debtor”) (collectively, the “Debtors”), hereby moves (the “Motion”) this Court
7 for entry of an order clarifying the proposed order granting chapter 11 trustee’s motion for order:
8 approving retention of ThreeSixty Asset Advisors, LLC and WFS Inc. dba Tranzon Asset Strategies
9 as auctioneers pursuant to 11 U.S.C. § 327 and approving auctioneer’s proposed costs; and
10 specifically clarifying the circumstances whereby secured creditor Give Back would be required to
11 pay a buyer’s premium.

12 **MOTION**

13 This Motion arises from the hearing held February 9, 2022 on the Trustee’s *Motion For*
14 *Order Approving Retention of ThreeSixty Asset Advisors, LLC and WFS Inc., dba Tranzon Asset*
15 *Strategies as Auctioneers Pursuant to 11 U.S.C. § 327 and Approving Auctioneer’s Proposed Costs*
16 (the “Motion to Employ”) [Doc. 226]. In general, the Motion to Employ provides that a successful
17 bidder on the Property (as defined in the Motion to Employ) would be required to pay a Buyer’s
18 Premium of 3% of the successful bid. At the hearing, a discussion was had, on the record,
19 concerning the circumstances under which secured creditor Give Back would be required to pay a
20 Buyer’s Premium. During that discussion, David Seror, counsel for the Trustee stated that Give
21 Back would not be required to pay a Buyer’s Premium on its credit bid. That is a correct statement
22 and the Motion to Approve Bid Procedures, yet to be filed, will contain language to that effect.
23 However, the discussion on this issue also included whether Give Back would be required to pay a
24 Buyer’s Premium on amounts bid in excess of its credit bid. In the course of that discussion, Seror
25 mistakenly stated a Buyer’s Premium of 3% would be required solely on the difference between the
26 credit bid amount and the actual amount bid. That statement was incorrect, as the Motion to
27 Approve Bid Procedures will provide that in the event secured creditor Give Back determines to bid
28 in excess of its credit bid, Give Back would be required and obligated to pay a Buyer’s Premium on

1 the totality of its successful bid, not just the amount by which the successful bid exceeds the credit
2 bid amount. The incorrect information was provided by Seror in error. In general terms, and
3 without waiving attorney-client privilege, there had been discussions among Trustee's counsel and
4 the auctioneers about the circumstances under which Give Back would be required to pay a Buyer's
5 Premium and how that amount would be calculated. While it was discussed that perhaps Give Back
6 would be required to pay a Buyer's Premium on the difference between its credit bid and successful
7 bid, it was ultimately determined that it would be fairer to other bidders and provide a more
8 competitive bid process if Give Back were required to pay a Buyer's Premium on its entire
9 successful bid not just the difference. At the hearing on the Motion to Employ, Seror mistakenly
10 referred to prior discussions and not the final determination made by the Trustee that it would be a
11 fairer and more competitive bid process if Give Back would be obligated to pay a Buyer's Premium
12 on the entirety of its credit bid.

13 On February 9, 2022, after the hearing, Seror spoke with counsel for Give Back and told
14 them that he misspoke at the hearing and that the Bid Procedures Motion would provide that Give
15 Back would be obligated to pay a Buyer's Premium on its entire successful bid if its bid exceeded its
16 credit bid. Efforts to arrive at a consensual order following the Motion to Employ were not
17 successful, and this motion is now required.

18 CONCLUSION

19 Based on the foregoing, the Trustee respectfully requests that the Court enter an order:

20 1. Granting this Motion;

21 2. Authorizing the Trustee to include the following language in the order granting the

22 Motion to Employ:

23 In the event Give Back, LLC purchases any or all of the Properties for amount(s)
24 up to its allowed credit bid, no Buyer's Premium will be assessed. In the event that
25 Give Back, LLC purchases one or all of the Properties for a total exceeding its
26 credit bid amount, then Give Back, LLC will be assessed the Buyer's Premium on
the entire bid amount which shall be distributed as follows: 1.5% to the Estate and
1.5% to the Auctioneer;

27 and,
28

1 3. Granting to the Trustee such other and further relief as the Court deems just and
2 proper under the circumstances.

3
4 DATED: February 14, 2022

BG LAW LLP

5
6 By: /s/ David Seror

David Seror

Jessica L. Bagdanov

Attorneys for Sam Leslie, Chapter 11 Trustee
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DECLARATION OF DAVID SEROR

I, David Seror, declare:

1. I am an attorney authorized and licensed to practice law in this State and am a member of BG Law, counsel for Sam Leslie, the duly appointed and acting chapter 11 trustee for the bankruptcy estates of Coldwater Development, LLC and Lydda Lud, LLC. I have personal knowledge of the facts contained in this declaration, and if called as a witness, I would and could competently testify thereto under oath.

2. I make this declaration in support of the Motion seeking to clarify the proposed order granting chapter 11 trustee's motion for order approving retention of ThreeSixty Asset Advisors, LLC and WFS Inc. dba Tranzon Asset Strategies as auctioneers pursuant to 11 U.S.C. § 327 and approving auctioneer's proposed costs; and specifically clarifying the circumstances whereby secured creditor Give Back would be required to pay a buyer's premium.

3. On February 9, 2022 a hearing was held on the Trustee's *Motion For Order Approving Retention of ThreeSixty Asset Advisors, LLC and WFS Inc., dba Tranzon Asset Strategies as Auctioneers Pursuant to 11 U.S.C. § 327 and Approving Auctioneer's Proposed Costs* (the "Motion to Employ") [Doc. 226]. In general, the Motion to Employ provides that a successful bidder on the Property (as defined in the Motion to Employ) would be required to pay a Buyer's Premium of 3% of the successful bid.

4. The court's tentative ruling raised the issue of compensation to the auctioneers if the property were sold to a credit bidder in light of a limited objection filed by Give Back. In response to this question, I stated that in the event secured creditor Give Back acquired the Property pursuant to a credit bid, no Buyer's Premium would be owed. That statement is correct, and the Motion to Approve Bid Procedures, which has not yet been filed, will so provide.

5. Then, the issue was raised about whether secured creditor Give Back would be required to pay a Buyer's Premium if it bids in excess of its credit bid amount. I responded that it would be required to pay a Buyer's Premium, however, I mistakenly also added that the Buyer's Premium would be based upon the difference between the successful bid and the credit bid amount. This statement was a mistake and is wrong. The Motion to Approve Bid Procedures, which has not

1 yet been filed, will provide that in the event Give Back is the successful bidder with a bid in excess
2 of its credit bid amount, it will be required and obligated to pay a Buyer's Premium on the entirety of
3 its successful bid.

4 6. In the course of employing the auctioneer, there were several discussion with the
5 Trustee and the auctioneers about the circumstances under which Give Back would be required to
6 pay a Buyer's Premium and how that amount would be calculated. There were discussions about
7 limiting the amount of a Buyer's Premium required from Give Back to the difference between its
8 credit bid and successful bid, it was ultimately determined that it would be fairer to other bidders and
9 provide a more competitive bid process if Give Back were required to pay a Buyer's Premium on its
10 entire successful bid not just the difference.

11 7. At the hearing on the Motion to Employ, I mistakenly referred to those prior
12 discussions and not the final determination made by the Trustee that it would be a fairer and more
13 competitive bid process if Give Back would be obligated to pay a Buyer's Premium on the entirety
14 of its credit bid.

15 8. On February 9, 2022, after the hearing, I spoke with counsel for Give Back and told
16 them that I had misspoke at the hearing and mistakenly stated that the amount of the Buyer's
17 Premium required of Give Back would be the difference between its credit bid amount and the
18 successful bid. I explained that while that concept had been discussed, it was ultimately determined
19 by the Trustee that Give Back would be obligated to pay a Buyer's Premium on its entire successful
20 bid if its bid exceeded its credit bid.

21 9. I apologized to counsel for this mistake and now apologize to the Court.

22 10. Efforts to arrive at a consensual order following the Motion to Employ were not
23 successful, and this motion is now required.

24 11. I am requesting this hearing on shortened notice so that the parties may proceed with
25 the marketing and auction of the Property as promptly as possible. As the parties' discussed during
26 the hearing on the Motion to Employ, the Trustee hopes to hold an auction of the Property in
27 approximately 6 weeks. Further delay of this matter will only serve to unnecessarily hold up the
28 marketing and sale process. Thus, I request that the Court set this matter for hearing as quickly as

1 possible given the Court's calendar to resolve this issue prior to the Trustee submitting a bid
2 procedures motion.

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct. Executed this ^{14th} day of February, 2022, at Los Angeles, California.

5 
6 _____
David Seror

DECLARATION OF SAM S. LESLIE

I, Sam S. Leslie, declare:

1. I am the duly appointed and acting chapter 11 trustee for the bankruptcy estates of Coldwater Development, LLC and Lydda Lud, LLC. I have personal knowledge of the facts contained in this declaration, and if called as a witness, I would and could competently testify thereto under oath.

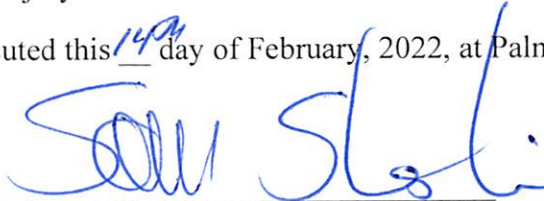
2. I make this declaration in support of the Motion for an order clarifying the proposed order granting chapter 11 trustee's motion for order: approving retention of ThreeSixty Asset Advisors, LLC and WFS Inc. dba Tranzon Asset Strategies as auctioneers pursuant to 11 U.S.C. § 327 and approving auctioneer's proposed costs; and specifically clarifying the circumstances whereby secured creditor Give Back would be required to pay a buyer's premium.

3. In the course of employing the auctioneers, there were discussions about the circumstances under which Give Back would be required to pay a Buyer's Premium and how that amount would be calculated. While it was discussed that perhaps Give Back should be required to pay a Buyer's Premium on the difference between its credit bid and successful bid, it was ultimately determined that it would be fairer to other bidders and provide a more competitive bid process if Give Back were required to pay a Buyer's Premium on its entire successful bid not just the difference.

4. In my business judgment, I believe that in the event Give Back determines to bid in excess of its credit bid, and if Give Back is the successful bidder, then is fair and reasonable for Give Back to pay a Buyer's Premium calculated on the entirety of its bid.

5. It is my opinion and judgment that a fairer and more competitive auction will result if Give Back is required to pay a Buyer's Premium on the entirety of its bid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of February, 2022, at Palm Springs, California.


Sam S. Leslie

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 21650 Oxnard Street, Suite 500, Woodland Hills, CA 91367.

A true and correct copy of the foregoing document entitled: **CHAPTER 11 TRUSTEE'S MOTION TO CLARIFY ORDER GRANTING CHAPTER 11 TRUSTEE'S MOTION FOR ORDER: APPROVING RETENTION OF THREESIXTY ASSET ADVISORS, LLC AND WFS INC. DBA TRANZON ASSET STRATEGIES AS AUCTIONEERS PURSUANT TO 11 U.S.C. § 327 AND APPROVING AUCTIONEER'S PROPOSED COSTS; DECLARATIONS OF DAVID SEROR AND SAM LESLIE** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **February 14, 2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

****JUDGE'S COPY UNDER 25 PAGES IS SUSPENDED (GENERAL ORDER 21-05).**

Honorable Sheri Bluebond
United States Bankruptcy Court
255 East Temple Street, Suite 1534
Los Angeles, CA 90012-3332

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

February 14, 2022
Date

NIKOLA A. FIELDS
Printed Name

/s/ Nikola A. Fields
Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

- **Jessica L Bagdanov** jbagdanov@bg.law, ecf@bg.law
- **Theodore A Cohen** tcohen@sheppardmullin.com, amontoya@sheppardmullin.com
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- **Dylan J Yamamoto** dylan.yamamoto@arentfox.com
- **Robert M Yaspan** court@yaspanlaw.com, tmenachian@yaspanlaw.com